HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.No.19213 of 2006

Date : 15-11-2006

Between :

R.Sriramulu s/o. Lakshmaiah .. Petitioner

and

The Chief Secretary,
Government of Andhra Pradesh,
Hyderabad
and others .. Respondents

HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.No.19213 of 2006

ORDER:

1. The Writ Petition is filed for a writ of mandamus declaring the action of respondents in deciding to grant lease of fishing rights in Paparayudu tank situate in an extent of Acs.80.77 cents in Sy.No.331 of Padamara Veerayapalem village, Kurichedu Mandal, Prakasam District as illegal, irregular, offending Articles 14 and 21 of the Constitution of India and also the provisions of A.P. Panchayat Raj Act and the Rules made thereunder and consequently direct the respondents to protect water for its natural purity use of the said tank and to pass such other suitable orders.

2. Sri Nimmagadda Satyanarayana, the learned Counsel representing the writ petitioner had taken this Court through the contents of the affidavit filed in support of the Writ Petition and would submit that in the facts and circumstances of the case, suitable directions to be given. The learned Counsel also pointed out to the relevant portions of the counter affidavit filed by the 5th respondent.

3. Per contra, Sri M.Prabhakar Rao, the Counsel representing the 5th respondent had pointed out that the general interest of the public is being well safeguarded and hence no further directions need be issued.

4. Heard the Counsel.

5. It is stated in the affidavit filed in support of the Writ Petition that there lies a tank called Papanaidu tank in an extent of Ac.7.80 cents in Sy.No.331 of Padamara Veerayapalem village. The said tank is in existence from times immemorial. Originally, it is shown that the said tank was excavated by the founders of village for drinking water purposes. It is further stated that in the recent past the management of the tank was given to the 5th respondent but the construction and related maintenance was vested with the 4th respondent and the 5th respondent started getting a paltry income of Rs.10,000/- to Rs.20,000/- per annum by leasing out the fishing rights of the said tank. It is also further stated that the persons who took leasehold rights on it from the 5th respondent started landing fish seed into the tank and growing the same by feeding, applying pesticides and chemicals for prevention of diseases and growing of fish. It is also further stated that when profiteering concept was introduced in growing fish by the leaseholders they resorted to contaminate the water and the same resulted in serious damage to the tank. It is further stated that on 12-9-2006 the 5th respondent sought for permission from respondents 2 and 3 to conduct auction of fishing rights on lease in Papanayudu tank. Further it is stated that it is learnt that the respondents 2 and 3 readily granted permission to that effect and if the respondents were allowed to grant fishing rights on lease to anybody the successful bidder would repeat the same activities as they did earlier such as taking fish seed in the tank and thereby contaminating the water. It is further stated that the cattle could not get drinking water and the bore-wells in the village are going dry in the summer but the 4th respondent is not preventing the other respondents from depriving the ayacutdars of irrigation and

the residents of Padamara Veerayapalem village of water. The action of respondents 2 to 4 in deciding to auction the fishing rights on lease in Papanayudu tank is illegal.

6. The 5th respondent filed counter affidavit denying several of the allegations. Further specific stand is taken that it is a fact that there lies a tank by name Paparayudu tank in an extent of Ac.7.80 cents in S.No.331 of Padamara Veerayapalem village, however it is false to say that the tank is a fresh water tank and the same was never set apart by the Gram Panchayat for drinking water purpose as contemplated under Section 81 of the A.P. Panchayat Raj Act. The said tank is a minor irrigation tank and the fishing rights are being auctioned since a long time. It is further stated that it is also incorrect to say that the water levels of the bore-wells in the village are falling down because of the auction of the fishing rights of the tank. As a matter of fact, the entire village is being provided with protected water scheme and the drinking water is being drawn from Kurichedu project and absolutely the villagers are not using the tank as drinking water tank. Absolutely there is no inconvenience to the ayacutdars of the tank as alleged. It is further stated in para-3 of the counter affidavit that it is absolutely incorrect to say that the fishing right holders are polluting the water by applying pesticides and other chemicals. The fishing rights are being granted subject to condition of non-usage of chemicals and other intoxicants for growing the fish. Except the writ petitioner, no villager is against leasing out the fishing rights of the tank to derive income to the Gram Panchayat. Obviously for some political reasons the present Writ Petition is set up by the writ petitioner for his personal gain. The writ petitioner cannot represent all the villagers and the so-called ayacutdars of the tank. It is further stated in para-4 of the counter affidavit that it is a fact that the 5th respondent requested

the respondents 2 and 3 to fix the upset price to lease out the fishing rights of the tank as contemplated under G.O.Ms.No.373 and the same is under consideration. The tank in question was not set apart by the Gram Panchayat for drinking purpose and therefore the Gram Panchayat is at liberty to lease out the fishing rights to derive income for the welfare of the Gram Panchayat. As long as the tank is not set apart for a particular purpose the Gram Panchayat can lease out the fishing rights of the particular tank and therefore the writ petitioner has no locus to question the auction of the Gram Panchayat in leasing out the fishing rights of the tank. It is also further stated in para-5 of the counter affidavit that the fishing rights were not even leased out so far and the Writ Petition is filed in anticipation of the alleged action and hence the Writ Petition is premature and the same is liable to be dismissed.

7. On a careful analysis of the averments made in the affidavit filed in support of the Writ Petition and also the counter affidavit, this Court is of the considered opinion that the grievances ventilated by the writ petitioner are more or less general in nature. However, in the light of the specific stand taken by the 5th respondent, it cannot be said that the apprehension expressed by the writ petitioner is bona fide. At any rate, in the light of the stand taken in the counter affidavit of the 5th respondent, this Court is of the considered opinion that no further orders need be passed inasmuch as by virtue of the stand taken by the 5th respondent it is clarified that the general interest of the villagers would be safeguarded and also all reasonable conditions are being imposed in relation thereto. Hence the stand taken in the counter affidavit of the 5th respondent is hereby recorded and inasmuch as no further orders are required to be made, the Writ Petition is accordingly

closed.

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Justice P.S. Narayana

Date : 16-11-2006

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